

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
JANUARY 23, 2006**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 23, 2006 in the City Council Chamber of the Melvin Municipal Office Building, Greensboro, North Carolina commencing at 2:04 p.m. The following members were present: Chair Hugh Holston, John Cross, Ann Buffington, Jim Kee, Russ Parmele and Rick Pinto. Bill Ruska, Zoning Administrator and Blair Carr, Esq., from the City Attorney's Office were also present.

Chair Holston explained the policies and procedures to be followed during the meeting.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Cross moved to approve the minutes of the December 19, 2005 meeting as written, seconded by Mr. Parmele. The Board voted unanimously in favor of the motion.

Mr. Ruska was sworn in for evidence to be given by him on the requests before the Board today. He also mentioned that there were visitors from the Oak Ridge Board of Adjustment to observe the meeting.

Chair Holston asked if there were any changes to the agenda. Mr. Ruska stated that Item 1 A, BOA-05-53, 920 North Church Street was requested to be withdrawn. Also there were requests to continue Item E, BOA-06-05, 3407 High Point Road; Item F, BOA-06-06, 310 West Meadowview Road; and Item C & D, BOA-06-03 and BOA-06-04, 405 Booker Street.

OLD BUSINESS

VARIANCE

- (A) BOA-05-53: 920 NORTH CHURCH STREET KOTIS PROPERTIES REQUESTS A VARIANCE FROM THE SPECIAL SETBACK FROM A THOROUGHFARE. VIOLATION: A PROPOSED COMMERCIAL BUILDING WILL ENCROACH 6 FEET INTO A 100-FOOT CENTERLINE SETBACK FROM EAST WENDOVER AVENUE. THIS CASE WAS CONTINUED FROM THE DECEMBER 19, 2005 MEETING. (A REQUEST TO WITHDRAW THIS ITEM HAS BEEN RECEIVED.) SECTION 30-4-7.3(X)(1), PRESENT ZONING-GB, BS-11, CROSS STREET-EAST WENDOVER AVENUE. (WITHDRAWN)**

Mr. Pinto moved to withdraw BOA-05-53, seconded by Ms. Buffington. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

APPEAL OF CIVIL PENALTIES

- (A) BOA-05-55: 4001 U.S. 220 NORTH DAVE'S CONSTRUCTION SERVICE, INC. APPEALS THE DECISION MADE BY THE ADVISORY COMMISSION ON TREES AT THEIR OCTOBER 12, 2005 MEETING REGARDING UPHOLDING A PORTION OF THE CIVIL PENALTIES THAT HAVE BEEN ASSESSED FOR REMOVAL OF TREES LOCATED AT 4001 U.S. 220 NORTH. THIS CASE WAS CONTINUED FROM THE DECEMBER 19, 2005 MEETING. SECTIONS 30-5-4.10 & 30-5-4.11. PRESENT ZONING-CD-HB AND HB, BS-228, CROSS STREET- HORSE PEN CREEK ROAD. (RETURNED TO ACT FOR REVIEW)**

Mr. Ruska stated that Dave's Construction Service, Inc. is appealing a decision by the Advisory Commission on Trees from their October 12, 2005 meeting upholding civil penalties which had been assessed for removal of trees on property located at 4001 U. S. 220 North. This case was continued from the Dec 19, 2005 meeting. On June 21, 2005, Melissa Begley, the City's Urban Forester, issued the applicant a civil penalty for \$18,400.00 and instructed them to replace 23 trees. An alternate measure was a civil penalty in the amount of \$6,072.00 and replant 23 two-inch caliper trees. On October 12, 2005, the Advisory Commission on Trees reduced the civil penalty to \$9,600.00. In addition to the fee, the applicant was also instructed to re-plant twelve - four inch caliper trees. On November 23, 2005, the applicant through his attorney appealed the decision of the Advisory Commission on Trees. A verbatim transcript has been furnished to each of you, which contains the proceedings of the Advisory Commission on Trees relative to this matter for use in your certiorari review of Dave's Construction Service, Inc. appeal of the Advisory Commission on Trees decision. The property is zoned CD-HB & HB. The property has frontage on U.S. Highway 220 North and Horse Pen Creek Road. Attached are copies of photos that show the trees before they were removed and how the property looks after the landscaping was completed.

Counsel Carr stated that the Board is required to review information and testimony and determine whether there was due process or if an appropriate hearing was held that gave Dave's Construction the ability to flesh out the evidence, to present witnesses, to present testimony and to determine if the hearing was conducted in an appropriate manner; based on the transcripts and the information provided to the Board. The Board is to determine whether there was competent evidence in the record that would support the decision made by the Advisory Commission on Trees (ACT); and whether the penalty was appropriate given what violations the Board finds and was this supported by competent evidence. This is not a new hearing and the Board is not to take new testimony, but only to decide based on the record before the Board if those questions have been answered.

Melissa Begley, City Arborist, was sworn in and presented a larger site plan of the property. She stated that this was a copy of the approved site plan that was submitted to the Planning Department and is a tree protection plan that shows the trees that were required to be saved. She referred to several pages of the transcript and explained that the site plan had been approved by the Technical Review Committee for the Eckerd Drug building and site. She also explained that she had received information that some of the trees that were required to be saved had actually been removed. She referred to the transcript several times during her explanation. She explained that the penalty as prescribed by the ordinance for all of the trees that were removed was \$18,400.00 and required a replacement of 23 trees. Staff determined that 13 trees total were removed with several being on the property line. In assessing the penalties, staff decided to make modifications to those penalties by weighing the information and on this particular case they modified the penalty to \$6,074.00 with a required replanting of 23 trees, with a caliper of 2 inches. She pointed out that the motion made by Mr. Hall was to modify the penalty to a fine of \$9,600.00 and replant 12 4-inch caliper trees.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Ken Keller, attorney representing the applicant, was sworn in and stated that this is an appeal from a portion of the determination of the Greensboro Advisory Commission on Trees and that portion of the decision that they are appealing which assessed a 100% maximum penalty in connection with the trees behind Nan's Dance Studio. They are not appealing the decision having to do with taking down the trees on the property line. The evidence came out during that hearing that there was a failure to coordinate plans for the Eckerd's with plans for the Sherwin-Williams store, which was to the north. Both border on U.S. 220 North (Battleground Avenue). There was tree protection required of Eckerd's which was being constructed by his client, Dave's Construction. There was no tree protection by the Sherwin-Williams property as they were entitled to build right up next to the property line. In fact, they excavated within five feet of the line and the testimony by the property developer was that the trees that were taken down were at his instructions and were taken down for safety reasons because the roots were cut and similarly the branches were cut. There was also testimony from their engineer who had the site plans which

showed two easements when put together were more than 60 feet and the Tree Advisory Commission rules exempt from the regulatory requirements, anything within the 60 foot easement. So the only contradictory evidence from the engineer was that that easement was on the Eckerd's side of the property line and therefore, the tree ordinance did not apply in any way. The Tree Advisory Commission correctly determined that they did not need to assess any penalties or make any fines as to non-compliance in connection with that property. They are appealing and saying that the evidence before the Board does not support a finding on which you could base a 100% maximum penalty. It supports a finding that the trees behind Nan's Dance Studio were taken down, but they do not agree with the penalty that was assessed. He covered the criteria that must be addressed in this case and also referred to the verbatim transcript. In referring to the criteria, he pointed out that it is felt that his client had adhered to all the required criteria in this matter. They contend that the record does not support a finding of a penalty of any more than \$3,200.00 and feel that the penalty assessed should be reversed.

During discussion among the Board members, it was stated by several members that they felt that the ACT had not addressed the original penalty of \$18,400.00 and did not realize that they had not taken into consideration that this contractor addressed the criteria with good results but had just made a mistake in taking down some of the trees that were supposed to be saved. They felt that a smaller penalty should have been ordered. There is insufficient evidence in the record that the ACT considered criteria, in general, in assessing the penalty and based on the failure of that evidence to support their award, the Board should send it back with instructions to review their award in light of whatever criteria they choose to consider in coming up with an award.

Mr. Pinto moved that in BOA-05-55, 4001 U.S. 220 North, based on the stated findings of fact as related by the Enforcement Officer and the testimony presented to this Board and a review of the record of the minutes of the regular meeting of the Greensboro Advisory Commission on Trees, that the violation and penalty as assessed by ACT be stricken and that the matter be returned to ACT because the record in the case does not support the ultimate ruling, in that, there was no evidence from the written record that the Commission considered criteria in whether or not to reduce the maximum penalty assessed. It would be the order of this Board that this matter be sent back to ACT to determine whether or not the \$9,600.00 penalty that was assessed should be modified in any amount after considering whatever appropriate criteria the Commission believes should be applied and make specific findings on what criteria was considered and how it was applied and enter an order for a penalty somewhere between zero and \$9,600.00, seconded by Ms. Buffington.

Mr. Cross made a friendly amendment to the motion to include that the caliper of trees be addressed as well as the penalty amount.

Mr. Pinto and Ms. Buffington agreed to the friendly amendment.

The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

NEW BUSINESS

VARIANCE**(A) BOA-06-01: 5216 MICHAUX ROAD JEFFREY BARBOUR REQUESTS A VARIANCE FROM THE LOCATION REQUIREMENT FOR DETACHED ACCESSORY BUILDINGS. VIOLATION: A PROPOSED DETACHED ACCESSORY GARAGE WILL BE LOCATED IN FRONT OF THE FRONT BUILDING LINE OF THE EXISTING SINGLE FAMILY DWELLING. SECTION 30-4-8.1 PRESENT ZONING-RS-20(CL), BS-229, CROSS STREET-OLD BARN ROAD. (GRANTED)**

Mr. Ruska stated that Jeffrey Barbour is the owner of a parcel located at 5216 Michaux Road. The lot is located on the eastern side of Michaux Road north of Old Barn Road on zoning map block sheet 172 and is zoned RS-20(CL). The lot contains a single family dwelling. The applicant is proposing to locate a 30 foot x 30 foot, (900 square feet) detached accessory building in front of the principal dwelling. The lot consists of approximately 40,075 square feet. Tax records indicate the house was built in 1915. The house is centered on the lot and is located 61 feet from the front property line. The detached garage will be located 42 feet from the front property line and approximately 18 feet from the dwelling. Section 30-4-8.1(A) *Single-family Development* states: "All accessory buildings and structures shall be located behind the front building line of the principal building." The adjacent properties are also zoned RS-20(CL).

Chair Holston asked if there was anyone present wishing to speak on this matter.

Jeff Barbour, the applicant, was sworn in and stated that because there are many old trees on this property and the dwelling is about 100 years old, they wish to construct a detached garage without disturbing the existing trees. He provided photos of other, newer homes in the neighborhood that have detached garages and he does not feel that the proposed project would have a detrimental impact on the neighborhood. There is also a large deck to the rear of the house that would negate the use of that deck. He also provided letters from neighbors that are familiar with his property and his plans for construction and they do not have any objections. Because of the new construction in the neighborhood, his property is now uniquely configured and he is left with the challenge of how to create a useful structure for his family. They are having difficulty with acorns and black walnuts falling on their vehicles and causing damage to their personal property. He asked that the Board allow the proposed construction.

Chair Holston asked if there was anyone present wishing to speak in opposition to this matter and no one came forward.

After some discussion Ms. Buffington stated that based on the stated findings of fact being incorporated for in BOA-06-01, 5216 Michaux Road, she moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: if the applicant complies with the provisions of the ordinance he can make no reasonable use of his property because the house is situated in such a way on the lot and from looking at the pictures, it looks like nothing could be done without taking down substantial trees; the hardship of which the applicant complains results from unique circumstances related to the applicant's property; the hardship results from the application of the ordinance to the property because the zoning complies with newer neighborhoods and this house was left with the unique shape to the lot, so if the applicant complies with the ordinance he would have to cut down a lot of trees, and move the driveway access; the hardship is not the result of the applicant's own actions because he bought an older home and he did not make it face sideways; the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the intent of the ordinance is to make things blend in with each other; the granting of the variance assures the public safety and welfare and does substantial justice because this property is the only one in the neighborhood that does not have a garage, seconded by Mr. Pinto. The Board voted 5-1 in favor of the motion: (Ayes: Buffington, Cross, Kee, Parmele and Pinto. Nays: Holston.)

At this time the Board took a five minute break.

Ms. Buffington stated that she would recuse herself from this matter.

Mr. Parmele moved to recuse Ms. Buffington from this item, seconded by Mr. Pinto. The Board voted 5-0-1 in favor of the motion. (Ayes: Holston, Cross, Kee, Parmele and Pinto. Nays: None. Abstained: Buffington.)

(B) BOA-06-02: 605 WEST MARKET STREET BROWN INVESTMENT PROPERTIES, INC. REQUESTS A VARIANCE FROM THE MINIMUM REQUIRED STREET SETBACK FROM A MAJOR THOROUGHFARE WHICH IS ZERO LOT LINE OR 45 FEET FROM THE CENTERLINE (WHICHEVER IS GREATER). VIOLATION: A PROPOSED MULTIFAMILY BUILDING WILL ENCROACH 13.5 FEET INTO A 45 FOOT CENTERLINE SETBACK FROM SOUTH SPRING STREET RIGHT-OF-WAY. TABLE 30-4-6.5, PRESENT ZONING- CB, BS-1, CROSS STREET- SOUTH SPRING STREET. (GRANTED)

Mr. Ruska stated that Brown Investment Properties, Inc. is the owner of a parcel located at 605 West Market Street. The property is located at the southwestern intersection of West Market Street and South Spring Street on zoning map block sheet 1. The lot is currently zoned CB. The applicant is proposing to construct a multifamily building. The applicant has stated the building encroaches 13.5 feet into a 45-foot centerline setback from South Spring Street. The major thoroughfare street setback requirements for the CB zoning district are zero lot line or 45-feet from the centerline (whichever is greater). The site plan shows a 50 foot dedication for this portion of South Spring Street. The centerline setback will place the closest portion of the building wall approximately 6 feet from the property line. The applicant is proposing a three story building with a parking garage underneath the building. The building will contain 51 units which are being proposed as condominiums. The lot is a corner lot and is bound by two major thoroughfares, West Market Street and South Spring Street. A variance is not needed for the West Market Street setback since it has a greater right-of-way. The adjacent property located to the west, the property located at the northwestern, northeastern and southeastern intersections are also zoned CB. The adjacent property located to the south is zoned PI.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Brian Byrd, representing the applicant, was sworn in and presented information for the Board's review. He stated that his client hopes to be allowed to renovate this property by building a three-story condominium complex building with parking on the lower level. There will be approximately 51 units in the building. It is felt that this proposed project is a significant step forward in revitalizing the downtown area. The property has some unique characteristics. One of the problems is that the right-of-way of Spring Street in this particular area is not of the width that the current development ordinance would require for a major thoroughfare. Because the Spring Street right-of-way is substandard, they are affected by a 45-foot setback from the centerline, which pushes any proposed improvement back into the property. In terms of the unique characteristics, this is a rectangular shaped piece of property and is a corner lot and is somewhat narrow at only about 130 feet deep. Also, there is no on-street parking available in the immediate area and that is what drives this request. In order to develop this property for any use, the property owner will have to provide on-site parking. If this project were being developed somewhere other than the Central Business district, the development ordinance would require about 72 parking spaces. The applicant is proposing to provide that number of parking spaces to serve this property by putting a parking area on the first level of the building under the units.

Chester Brown, the applicant, was sworn in and stated that they plan to develop this property as described earlier. In order to make a property that is marketable, it is felt that it is imperative to provide sufficient on-site parking and they have to use each square foot of the property in the most efficient way possible. The variance will allow them to have 2 double bays of parking which would provide an equal number of parking spaces if the property were built outside the Central Business district.

Homer Wade, 621 Eugene Court, was sworn in and answered questions by the Board members concerning the issue of public safety because the building will be right on the property line and stated that they had talked with Adam Fisher and Lane Hall of GDOT and NCDOT and both have indicated that they have no further plans to widen Spring Street.

Chair Holston asked if there was anyone present wishing to speak in opposition to this matter and no one came forward.

After some discussion Mr. Pinto stated that in regard to BOA-06-02, 605 West Market Street, based on the stated findings of fact and incorporating the findings of fact read into the record by the Zoning Enforcement Officer, he moved that the Zoning Enforcement Officer be overruled and the variance be granted based on the following: there are practical difficulties or unnecessary hardships that would result from carrying out the strict letter of the ordinance because of the issue of on-site parking and it seems appropriate that a reasonable use of this property would be a condominium project that would be in keeping with the Greensboro Central Business District plan and revitalization of downtown but in order to accomplish that, on-site parking is necessary as there is no parking adjacent to, on the streets or around or even a parking deck close to this project; in order to facilitate on-site parking and in light of the limited square footage of the property, it is reasonable to have the structure of the building along the property line; the hardship of which the applicant complains results from unique circumstances relating to this property as it is rectangular in shape and because of the substandard right-of-way having to do with Spring Street, the property necessarily must encroach up to that right-of-way even though it is within the lot line; also, this Board has taken into account the fact that this is one-way on Spring Street which is 220 South and if you add into the mix the fact that Edgeworth Street is 220 North and if you combine those two streets, this would not be in violation of the minimum setback requirement of 45 feet for that road as a whole; the hardship results from the application of the ordinance to the property as previously stated and the hardship is not the result of the applicant's own actions; the property is the depth and width that it is and the location of the building is limited and if you are trying to put a sufficient number of parking places under the building and the proposed plan attempts to put parking places at a maximum in a way that would most fit in line with appropriate building practices; the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit for the reasons previously stated; the granting of the variance assures the public safety and welfare and does substantial justice and the GDOT has already reviewed the plan and they do not have a problem with it and having on-site parking is probably a plus to public safety as opposed to having people walking toward public access, seconded by Mr. Kee. The Board voted 5-0-1 in favor of the motion: (Ayes: Holston, Cross, Kee, Parmele and Pinto. Nays: None. Abstained: Buffington)

(C) BOA-06-03: 405 SOUTH BOOKER STREET CHANCELLOR COURT, LLC REQUESTS A VARIANCE FROM THE MINIMUM INTERIOR PROPERTY LINE SETBACK. VIOLATION: THREE MULTIFAMILY BUILDINGS WILL ENCROACH 4 FEET INTO A 20-FOOT INTERIOR SETBACK. TABLE 30-4-6-4, PRESENT ZONING-CD-RM-26, BS-4, CROSS STREET-CUNNINGHAM STREET. (CONTINUED)

(D) BOA-06-04: 405 SOUTH BOOKER STREET CHANCELLOR COURT, LLC REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. VIOLATION: THE PROPOSED CONSTRUCTION OF 36 MULTIFAMILY DWELLING UNITS WILL REQUIRE 72 PARKING SPACES AND THE APPLICANT IS PROPOSING TO PROVIDE 67 SPACES, THUS A VARIANCE FOR 5 SPACES IS REQUESTED. TABLE 30-5-3-1, PRESENT ZONING-CD-RM-26, BS-4, CROSS STREET-CUNNINGHAM STREET. (CONTINUED)

Chuck Truby, representing the applicant, requested that these items be continued to the February meeting.

Mr. Pinto moved that these two items be continued to the February meeting, seconded by Mr. Parmele. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

(E) BOA-06-05: 3407 HIGH POINT ROAD NSHE GREENSBORO, LLC REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK. VIOLATION: A PROPOSED LOADING DOCK WILL ENCROACH 18 FEET INTO A REQUIRED 30-FOOT SETBACK FROM PASCHAL STREET. TABLE 30-4-6-5, PRESENT ZONING-HB & CD-LI, BS-43, CROSS STREET-PASCHAL STREET. (CONTINUED)

Jeff Sutherland, attorney representing the applicant, requested that this item be continued until the February meeting.

Ms. Buffington moved that this item be continued to the February meeting, seconded by Mr. Cross. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

(F) BOA-06-06: 310 WEST MEADOWVIEW ROAD HERITAGE HOUSE 310, LLC REQUESTS VARIANCES FROM THE PARKING REQUIREMENT THAT PARKING SPACES FOR A BAR MAY NOT BE LOCATED OFF-SITE AND FROM THE REQUIREMENT THAT REQUIRED PARKING FOR A BAR MAY NOT BE LOCATED ACROSS AN INTERVENING MINOR THOROUGHFARE. VIOLATION #1: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING SPACES FOR A PROPOSED BAR OFF-SITE FROM THE ZONED LOT. TABLE 30-5-3-1. VIOLATION #2: THE APPLICANT IS REQUESTING TO LOCATE REQUIRED PARKING ACROSS WEST MEADOWVIEW ROAD, A MINOR THOROUGHFARE. SECTION 30-5-3.5(A). PRESENT ZONING-CD-PDI, BS-165, CROSS STREET-VILLAGE GREEN DRIVE. (CONTINUED)

Marc Isaacson, attorney representing the applicant, requested that this item be continued until the February meeting.

Mr. Kee moved that this item be continued to the February meeting, seconded by Mr. Parmele. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-06-07: 305 FRANKLIN BOULEVARD LEROY AND ANGELA HENRY REQUEST A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 1,240 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-7, BS-34, CROSS STREET-EASTLAND AVENUE. APPEAL OF A CIVIL PENALTY. (DENIED)

Mr. Ruska stated that Leroy and Angela Henry are the owners of the property located at 305 Franklin Boulevard. The lot is located on the east side of Franklin Boulevard north of Eastland Avenue on zoning map block sheet 34. The property is zoned RS-7. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(B) to locate a proposed family care home (6 or less persons) 1,240 feet from an existing family care home (6 or less persons) instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 80 feet.

This measurement is established from property line to property line. The existing family care home is located at 4104 Hope Valley Lane, which is located south and east of the proposed family care home. The homes will be separated by three collector streets and numerous single family homes. Attached is a copy of an updated report for Board of Adjustment Special Exception requests for family care homes from January 2,000 through December 2005. The adjacent properties are also zoned RS-7.

Chair Holston asked if there was anyone present wishing to speak on this matter and no one came forward.

Mr. Cross pointed out that there was no information indicating that there was a viable reason to change the rules of the ordinance and nothing significant such as a major thoroughfare or something that separates that property from the other existing facility so that there is no argument for clustering. He would not support this request based on the lack of information. Several Board members stated that they had the same feeling about this request as Mr. Cross.

Mr. Kee moved to deny the request for a Special Exception for BOA-06-06, 310 West Meadowview Road, based on the stated findings of fact, he moved that the Zoning Enforcement officer be upheld and the variance denied, seconded by Mr. Cross. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

(B) BOA-06-08: 4005 DONEGAL DRIVE MICHAEL HORLICK APPEALS A CIVIL PENALTY (#2247) IN THE AMOUNT OF \$50.00 IN REFERENCE TO THE CONSTRUCTION OF A CARPORT WHICH IS ATTACHED TO A DWELLING THAT DOES NOT COMPLY WITH THE MINIMUM SIDE SETBACK REQUIREMENT. THE CARPORT IS REQUIRED TO BE A MINIMUM OF 5 FEET FROM THE SIDE LOT LINE; HOWEVER IT HAS BEEN CONSTRUCTED ON THE LOT LINE. TABLE 30-4-6-1 & 30-8-5.4, RS-9, BS-153, CROSS STREET- REHOBETH CHURCH ROAD. (DENIED)

Mr. Ruska stated that Michael Horlick is the owner of the property located at 4005 Donegal Drive. The lot is located on the northeast side of Donegal Drive east of Galway Drive on zoning map block sheet 153. The lot is currently zoned RS-9. In early December 2004, Barry Levine, Zoning Enforcement Officer, received a complaint from the Building Inspections Department that the owners of the property had constructed a carport that was too close to the property line. Mr. Levine made a site inspection, and on December 9, 2004 issued a Notice of Violation to the property owner, Michael Horlick. The property owner was instructed to comply with minimum setback requirements. The requirement for an attached carport is five feet from the side lot line. The applicant has built the carport on the property line. The carport roofline has about a one-inch gap from the dwelling located at 4007 Donegal Drive. The applicant is the owner and resides at 4007 Donegal Drive. His property at 4005 Donegal Drive is rental property. Compliance could be achieved by removing a portion of the carport and meeting the five foot setback. Significant time has passed and the violation has not been corrected. On November 18, 2005, the applicant was issued a civil penalty (#2247) in the amount of fifty dollars (\$50.00). On December 6, 2005, the applicant appealed the civil penalty. The adjacent properties are also zoned RS-9.

Counsel Carr reminded the Board that this is an appeal of a civil penalty and is not a request for a variance.

Chair Holston asked if there was anyone present wishing to speak on this matter.

Michael Horlick, the applicant, 4007 Donegal Drive, was sworn in and stated that he bought the adjacent property in 2002 for his mother in law to live in. While living there, she requested a garage/carport structure to be placed on the property because the neighbor at 4003 Donegal Drive has a carport like the one he just built on her property and it sits on the property line. He did the construction just like the one at 4003 Donegal and put it in the same place as the one at 4003

Donegal on the property line. When he went to apply for a variance on 4007 Donegal Drive there was no mention of the structure on 4005 and he had six months to do the improvements but he was not informed that he had a time limit to complete the work on 4005 Donegal and he did not know he had a certain amount of time to file an appeal when he was first told about the encroachment. He has also found out that the property at 4003 has a variance for that carport. He was told by the Building Inspector that the work he did is not up to Code because he did it like a fence post and the slope of the roof is not up to Code. He fixed these things but it is just like the one located at 4003 Donegal Drive but that carport remains there. He hopes the fine will be waived because he did not know he only had a certain amount of time to finish the job. They City is also requiring him to get a survey of the property and he really cannot afford that extra expense. He pointed out that the carport on the property at 4003 Donegal Drive is still in place and they are not being bothered to get theirs right and it is also 2 inches onto his property and it is encroaching on his land.

Mr. Ruska pointed out that in the Notice of Violation that Mr. Horlick received it plainly stated that he had fifteen (15) days in which to appeal the Notice of Violation dated December 2004.

In response to questions by the Board members, Barry Levine, Zoning Enforcement Officer, was sworn in and stated that Mr. Horlick received a letter dated April 28, 2005 that referenced the case BOA-05-05 that the variance had been denied and there was six months to remove the carport and storage shed at that location and the carport at 4005 Donegal, so for 4007 and 4005 Donegal Drive he had six months to remove it all. He signed showing he had received these letters.

After some discussion Ms. Buffington moved to deny the appeal of a civil penalty in regard to BOA-06-08, 4005 Donegal Drive, seconded by Mr. Pinto. The Board voted 6-0 in favor of the motion: (Ayes: Holston, Buffington, Cross, Kee, Parmele and Pinto. Nays: None.)

OTHER BUSINESS:

The members reminded Mr. Ruska that there is an appointment that needs to be made to the Board. Mr. Ruska stated that he would contact the Clerk's office about this matter.

Mr. Parmele informed the Board that he had received notice of a Training Seminar on Monday, February 20, 2006. Mr. Ruska stated that Blair Carr would be speaking at that seminar to talk about trespass and searches.

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There being no further business before the Board the meeting was adjourned at 4:50 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/jd